

2018-09210

ELKHART COUNTY RECORDER
JENNIFER L. DORIOT
FILED FOR RECORD ON
AS PRESENTED
05/11/2018 03:07 PM

Cross-reference Instrument No. 2016-18958

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

NOTICE OF ENVIRONMENTAL CONTAMINATION

This Notice of Environmental Contamination ("Notice") is made this 25th day of April, 2018, by the United States Environmental Protection Agency ("EPA") to provide information concerning subsurface contamination present on the real property located at 0 County Road 10, Elkhart, Indiana ("the Property"), located in the City of Elkhart, County of Elkhart, State of Indiana, and identify activities and uses that, if conducted at the Property, may undermine the integrity of the cleanup at the Himco Dump Superfund Site ("Site") and on the Property, and/or present an imminent and substantial endangerment to public health, welfare, or the environment.

WHEREAS, the Property consists of a 38.67-acre parcel, located at 0 County Road 10, which is more particularly described in attached Exhibit A and made a part hereof, which was acquired by Quitclaim Deed dated April 21, 2016, and recorded on September 16, 2016, as Instrument Number 2016-18958, in the Office of the Recorder of Elkhart County, Indiana; and

WHEREAS, the County of Elkhart identifies the Property as Parcel No. 01-36-201-001-005 and identifies the current owner of the Property as Zap Distributing, LLC; and

WHEREAS, as shown on the map attached as Exhibit B, the Property is part of the Site where: (1) EPA issued a Record of Decision ("ROD") for the Site describing the selected remedial action ("the Remedy") to be conducted on the Site and on the Property, including the implementation of institutional controls ("ICs") to minimize the possibility of exposure to contaminated soil and groundwater; (2) certain defendants ("Defendants") entered into a Consent Decree in the matter of *U.S. v. Bayer HealthCare LLC, et al.*, Civil Action No. 2:07-cv-304-TS (N.D. Ind. Nov. 28, 2007) to perform remedial design/remedial action at the Site; and (3) the Defendants conducted a response action under the authority of Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604; and

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NO SALES DISCLOSURE REQUIRED - LM

WHEREAS, the Remedy addresses the hazardous substances, pollutants, and contaminants found at the Site, located in groundwater, soil, and sediment, and a list of the contaminants of concern identified at the Site is attached as Exhibit C; and

WHEREAS, the disturbance of remaining contamination at the Site or on the Property could result in a risk of exposure to the public and may present an imminent and substantial endangerment to public health, welfare, or the environment; and

WHEREAS, this Notice does not and is not intended to create any right, title, or interest in real estate in favor of the Defendants or EPA, create a lien against the Property, or restrict the use and enjoyment of the Property. Rather, it is intended to provide notice and information concerning the presence of contamination at the Property and to caution interested parties against using the Property in any manner that may increase the risk of exposure to the contamination and result in an imminent and substantial endangerment to public health, welfare, or the environment.

NOW, THEREFORE, EPA provides notice that:

FIRST, the Property subject to this Notice is described in Exhibit A and is shown on a map attached to this Notice as Exhibit B and made a part hereof.

SECOND, EPA concluded in the ROD for this Site that the activities listed below may increase the risk of exposure to contamination and present an imminent and substantial endangerment to public health, welfare, or the environment:

- Coming into contact with contaminated groundwater in the landfill portion of the Site ("Landfill") through drilling or digging into the landfill;
- Using the Landfill for residential purposes without appropriate institutional controls on the Landfill;
- Intrusive drilling or digging at the Landfill, potentially exposing persons to contaminants in the soil or landfill gases present in the Landfill; and
- Maintaining, operating or installing private wells or otherwise utilizing the groundwater at the Site.

EPA has compiled an Administrative Record that includes the documents that were considered by EPA when selecting the remedial action for the Site, including the documents supporting the need for ICs designed to prevent exposure after the cleanup has been finished. The Administrative Record also includes data and information regarding the groundwater and soil samples collected from the Property. The Administrative Record is available for public review electronically at <https://semspub.epa.gov/src/collections/05/AR3799>.

THIRD, EPA intends to use this Notice as an IC as part of the Remedy to help reduce future potential exposure to contamination. A person may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), if the person conducts activities at the Site which, among other things, cause the release of hazardous substances on-site. In order to qualify for certain conditional liability protections, namely the innocent landowner, bona fide prospective purchaser, or contiguous landowner protections under Sections 101(35)(A), 101(40)(F), 107(q)(1)(A)(v) of CERCLA, 42

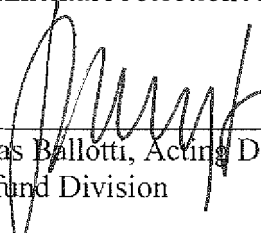
U.S.C. §§ 9601(35)(A), 9601(40)(F), and 9607(a)(1)(A)(v), a person must, among other things, (i) comply with any land use restrictions established or relied on in connection with the response action at a facility including the ROD for this Site, and (ii) not impede the effectiveness or integrity of any IC employed at the facility in connection with a response action, including the ROD for this Site.

FOURTH, EPA is available to consult with any party seeking to engage in any activity at the Property. A request for consultation may be made by contacting EPA's project manager for the Site at the following address:

Ross del Rosario
Remedial Project Manager
United States Environmental Protection Agency – Region 5

77 West Jackson Boulevard
Chicago, Illinois 60604
Mail Code: SR-6J
(312) 886-6195
Email: delrosario.rosauro@epa.gov

IN WITNESS WHEREOF, the undersigned, acting by and through the United States Environmental Protection Agency, has executed this instrument on the day written below.



Douglas Ballotti, Acting Director
Superfund Division

Date

4/25/2018



I, JOHN V. FAGIOLO, a Notary Public in and for the County of Cook, State of Illinois, do hereby certify that Douglas Ballotti, whose name is signed to the writing above and the representative of the agency, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said agency.

Given under my hand this 25TH day of APRIL, 2018. My commission expires 03/13/22.

This instrument prepared by John C. Matson, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5 (C-14J), 77 West Jackson Blvd., Chicago, IL 60604.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John C. Matson, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5 (C-14J), 77 West Jackson Blvd., Chicago, IL 60604

RETURN RECORDED
DOCUMENT TO:

Ross del Rosario
Remedial Project Manager
United States Environmental Protection Agency – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Mail Code: SR-6J
(312) 886-6195
Email: delrosario.rosauro@epa.gov

EXHIBIT A
LEGAL DESCRIPTION OF REAL ESTATE

All those certain pieces, or parcels of land, located in the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section Thirty-Six (36), Township Thirty-Eight (38) North, Range Four (4) East, excepting therefrom all those certain pieces, or parcels of land, comprising the right of way and property of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, containing One and Thirty-Eight Hundredths (1.38) acres, more or less.

CONTAINING 38.67 acres of land.

Elkhart County Parcel No. 01-36-201-001-005

Property Address: 0 County Road 10, Elkhart, Indiana

EXHIBIT B
MAP OF PROPERTY

EXHIBIT C

LIST OF CHEMICALS OF CONCERN AND CONCENTRATION LEVELS/DETECTED PARAMETERS

<p style="text-align: center;">Southern Downgradient Ground Water</p> <p style="text-align: center;">Basis: well pair: WT116A/WT119A (1990-2000)</p>	<p style="text-align: center;">Eastern Downgradient Ground Water</p> <p style="text-align: center;">Basis: WT101A, WT114A, WT114B, GP16 (all depths), GP101 (all depths), GP114 (all depths)</p>	<p style="text-align: center;">Eastern Residential Wells</p> <p style="text-align: center;">Basis: Individual Residential Wells</p>
<i>Carcinogens</i>	<i>Carcinogens</i>	<i>Carcinogens</i>
arsenic benzene bis(2-ethylhexyl)phthalate carbazole 1,2-DCP vinyl chloride	arsenic benzene bis(2-ethylhexyl)phthalate 1,2-DCP	arsenic benzene chloroform 1,2-DCA (EDC) 1,2-DCP vinyl chloride
<i>Noncarcinogens</i>	<i>Noncarcinogens</i>	<i>Noncarcinogens</i>
antimony iron manganese sodium thallium	chromium iron manganese sodium thallium	calcium iron manganese sodium sulfate 1,1-DCA cis-1,2-DCE